

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of  
Federal-State Joint Board on Universal Service

Pine Belt Cellular, Inc.  
Petition for Waiver of Sections 54.314  
and 54.904 of the Commission's Rules

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WC Docket No. 08-71

**PETITION FOR WAIVER**

John C. Nettles, President  
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Date: May 29, 2009

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## SUMMARY

Pine Belt Cellular, Inc. ("Pine Belt"), pursuant to section 1.3 and 1.925 of the Federal Communication Commission's ("FCC's" or "Commission's") rules, hereby petitions the Commission for waiver Sections 54.314 and 54.904 of the Commission's rules regarding filing annual certifications for receipt of universal service support ("USF").

Pine Belt needs this waiver, and hardship will result to its rural customers if a waiver is not granted in this case. As described in this Petition, annual certifications were filed past the deadline, and a waiver is necessary to receive approximately \$150,000 in payments that otherwise would have been forthcoming to Pine Belt to provide just, reasonable and affordable services to its rural customers.

Pine Belt is a small family-owned provider of cellular and personal communications services to rural and non-rural incumbent local exchange ("ILEC") areas in Alabama. Pine Belt was first certified by the FCC as an Eligible Telecommunications Carrier ("ETC") for non-rural areas in Alabama in May 2002, and filed for expanded ETC authority in 2005, seeking to add rural areas in Alabama to its ETC service territory. That additional ETC authority was granted by Commission Order effective in August 2008.

Pine Belt coordinates USAC filings with its outside consultant, the accounting firm of Jackson Thornton in Montgomery, Alabama. It requested that they prepare the certifications in question. The October 2008 certification was prepared by Jackson Thornton and forwarded to Pine Belt in late September 2008 prior to the due date for review and signature.

Pine Belt's President John Nettles reviewed the letter, and noticed that the letter needed to be revised to include rural study area information. He revised the letter to include the additional information, and e-mailed the draft letter back to Jackson Thornton for review and discussion. The follow-up discussion did not occur, and the letter did not get timely filed with USAC. The error was not discovered until Pine Belt failed to receive USF funds for January and February 2009. Pine Belt certainly intended to make a timely filing, and has in place procedures to make the filing, and has reviewed, emphasized and re-emphasized these procedures. Both Pine Belt and Jackson Thornton thought the filing had been made with USAC. All associated line counts were timely filed. When they found out from USAC that the certification filing had been missed, they proceeded to have additional conversations with USAC, and filed the certification that relates to high cost funds in March 2009.

During subsequent conversations between Jackson Thornton and USAC, it was discovered that certain additional USF funds for August 2008 through June 2009 could be made available to Pine Belt if they filed revisions to line counts back to August 2008, made the required annual filings certifying proper use of the funds and obtained a Commission waiver with respect to the certification filings. Thus hardship waiver is requested.

Pine Belt respectfully submits that grant of this waiver will not cause undue administrative burden on the USAC or the FCC. Waiver of the rule would serve the public interest by permitting Pine Belt to continue to provide quality service to its customers. Failure to grant a waiver would result in undue hardship and would disproportionately penalize Pine Belt for its inadvertent mistake.

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and 54.904 of the Commission's Rules )  
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WC Docket No. 08-71

To: Wireline Competition Bureau

**PETITION FOR WAIVER**

Pine Belt Cellular, Inc. ("Pine Belt"), pursuant to section 1.3 and 1.925 of the Federal Communication Commission's ("FCC's" or "Commission's") rules,<sup>1</sup> hereby petitions the Commission for waiver Sections 54.314 and 54.904 of the Commission's rules regarding filing annual certifications for receipt of universal service support ("USF").<sup>2</sup>

Pine Belt needs this waiver, and hardship will result to its rural customers if a waiver is not granted in this case. Due to circumstances described more fully below, annual certifications were filed past the deadline, and a waiver is necessary to receive approximately \$150,000 in payments that otherwise would have been forthcoming to Pine Belt to provide just, reasonable and affordable services to its rural customers.

Section 54.314 requires that eligible telecommunications carriers ("ETCs") not subject to the jurisdiction of a state to file an annual certification with the Administrator and

<sup>1</sup> 47 C.F.R. § 1.3, § 1.925. Pursuant to § 1.1105, no filing fee applies to this request.

<sup>2</sup> 47 C.F.R. § 54.314 and § 54.904. At issue are the October 1, 2008 high cost annual certification, a revision to the high cost certification originally filed in September 2007, the June 30, 2008 ICLS certification, and if necessary, some associated revised line count information. Missed payments include high cost model ("HCM"), high cost loop ("HCL"), local switching support ("LSS"), and interstate common line support ("ICLS"). Estimated payment amounts by category are included in Exhibit 2.

the Commission stating that all federal high cost support provided to such carriers will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, and that funds will only be provided if the certification has been provided.<sup>3</sup>

Section 54.904 requires carriers seeking to receive ICLS support to file an annual certification with the USAC Administrator. Pine Belt has filed with USAC the certifications and associated revised line count information, and needs this hardship waiver to receive funds to provide telecommunications services to the customers in its rural underserved area.

#### **CIRCUMSTANCES OF HARDSHIP JUSTIFY THIS WAIVER REQUEST**

Pine Belt is a small family-owned provider of cellular and personal communications services to rural and non-rural incumbent local exchange ("ILEC") areas in Alabama. Pine Belt's affiliate, Pine Belt Telephone is a small rural ILEC serving customers in southern Alabama. Pine Belt was first certified by the FCC as an Eligible Telecommunications Carrier ("ETC") for non-rural areas in Alabama in May 2002. It filed to expand the scope of its ETC authority in 2005, seeking to add rural areas in Alabama to its ETC service territory. That additional ETC authority was granted by Commission Order effective in August 2008.<sup>4</sup>

Pine Belt has a very small staff of regulatory, accounting and technical professionals who allocate their time between multiple tasks for its telephone and

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<sup>3</sup> The Section 54.314 certification was due on October 1, 2008. The Section 54.904 certification was due on June 30, 2008. See Declaration of John C. Nettles, Exhibit 1, and Declaration of Rod Ballard, Exhibit 2.

<sup>4</sup> *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Dkt No. 96-45, Memorandum Opinion and Order, DA 02-1252 (rel. May 24, 2002); *Alltel Communications, Inc., et al, Petitions for Designation as Eligible Telecommunications Carriers*, CC Dkt. No. 96-45, Order, FCC 08-122 (rel. May 1, 2008).

wireless companies. It supplements its small staff by employing outside consultants to assist with universal service support filings. Pine Belt has made material, substantial and timely efforts to comply with all the requirements and filings necessary to qualify for and receive universal service support, and as detailed below, seeks this relief to correct inadvertent filing errors related to miscommunication with its outside consultant.

Pine Belt needs this support to serve its economically challenged underserved rural territory. Pine Belt serves one of the poorest areas in the United States, with extremely high, and worsening, unemployment as illustrated in the following table:

Comparative Unemployment Data						
	Civilian Labor Force		Employment		Unemployment Rate	
	Feb-08	Feb-09	Feb-08	Feb-09	Feb-08	Feb-09
United States	153,498,000	154,214,000	146,075,000	141,748,000	4.8	8.1
Alabama	2,166,519	2,146,285	2,078,741	1,965,738	4.1	8.4
Choctaw	5,026	5,010	4,691	4,436	6.7	11.5
Dallas	15,247	15,954	14,046	12,996	7.9	17.3
Marengo	7,932	7,800	7,449	6,911	6.1	11.4
Perry	3,417	3,597	3,169	2,988	8.7	17.0
Wilcox	3,405	3,566	3,043	2,798	10.6	21.5
Pine Belt Cellular Licensed Area Total	35,027	35,927	32,398	30,129	7.5	16.1
PBCLA Relative to US					156%	199%
PBCLA Relative to Alabama					183%	192%
Source: <a href="http://www2.dir.state.al.us/LAUS/cntydata.pdf">http://www2.dir.state.al.us/LAUS/cntydata.pdf</a>						

Pine Belt coordinates USAC filings with its outside consultant, the accounting firm of Jackson Thornton in Montgomery, Alabama. It requested that they prepare the certifications

in question. The October 2008 certification was prepared by Jackson Thornton and forwarded to Pine Belt in late September 2008 prior to the due date for review and signature. Pine Belt's President John Nettles reviewed the letter, and noticed that the letter needed to be revised to include rural study area information. He revised the letter to include the additional information, and e-mailed the draft letter back to Jackson Thornton for review and discussion. The follow-up discussion did not occur, and the letter did not get timely filed with USAC. The error was not discovered until Pine Belt failed to receive USF funds for January and February 2009. Pine Belt certainly intended to make a timely filing, and has in place procedures to make the filing, and has reviewed, emphasized and re-emphasized these procedures. Both Pine Belt and Jackson Thornton thought the filing had been made with USAC. All associated line counts were timely filed. When they found out from USAC that the certification filing had been missed, they proceeded to have additional conversations with USAC, and filed the high cost certification.

During subsequent conversations between Jackson Thornton and USAC, it was discovered that certain additional USF funds for August 2008 through June 2009 could be made available to Pine Belt if they filed revisions to line counts back to August 2008, made the required annual filings certifying proper use of the funds and obtained a Commission waiver with respect to the certification filings.<sup>5</sup> Thus this filing is presented to the Commission.

Recently the Wireline Competition Bureau, in a decision granting waiver to the rural carrier Northeast Iowa Telephone Company, emphasized that substantial hardship to Northeast Iowa's customers would result absent the requested waiver, because it did not

<sup>5</sup> According to a December 1, 2006 notice appearing on USAC's website, USAC permits CETCs to make revisions to line counts for a twenty-four month period.



realize that NECA had not filed its LSS certification, as NECA had done in previous years. The decision noted that if the carrier missed the annual deadline for certification it would not receive funding for the entire year, and such result would impose a substantial hardship on a small rural carrier.<sup>6</sup>

In *Northeast Iowa*, the Bureau emphasized that quality service available at just, reasonable and affordable rates is a fundamental principal of the Commission's universal service policies, and that denying LSS for an entire calendar year to a small LEC such as Northeast Iowa would undermine that goal.

Here Pine Belt is seeking waiver or the Commission to allow it to receive high cost model funds from January 2009 to June 2009 and HCL, LSS and ICLS for August 2008 through June 2009. The total amount of funds at issue is approximately \$150,000—a significant sum for a small rural carrier.

Pine Belt has been an ETC in Alabama since 2002. It obtained additional rural authority by order granted in May 2008, effective in August 2008. Although Pine Belt has been filing its line counts on an ongoing basis since its initial certification in 2002, the addition of the rural service area to its ETC authority in 2008 permitted Pine Belt to file line counts back to August 2008. Its outside accountants filed revisions to its Forms 525 to include the appropriate line count information after USAC made them aware that Pine Belt is eligible to receive these funds.

Pine Belt should be allowed to submit its revised line counts under USAC's line count revision policy. This policy permits carriers to submit revisions to their Forms 525

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<sup>6</sup> *Northeast Iowa Telephone Company* ("Northeast Iowa"), Order, DA 09-886, (Wireline Competition Bureau, rel. April 21, 2009).

within a 24 month period.<sup>7</sup> Because Pine Belt already had ETC authority in Alabama, Pine Belt should not be subject to the rule that allows submission of the associated line counts only within a 60 day period following initial certification of the carrier as an ETC.<sup>8</sup> However, in the event the Bureau finds this provision of the rules applicable, Pine Belt also requests a hardship waiver of this provision.

Recent decisions by the Bureau appear to draw distinctions between filings that were made a few days late, or with a small ministerial error, and those filings that were made several months later. Often, these decisions grant the “few days late” filings and deny the “several months later” filings, even if the later filings were made soon after discovery of the filing mistake.<sup>9</sup> With all due respect to the Bureau’s decision-making process, Pine Belt requests that additional consideration be given to the hardship that results to a carrier and its customers, even or especially when the difficulty is not discovered right away. These distinctions, between a few days and a few months, while having an understandable surface appeal, result in decisions that fall much harder on the small companies that need the most assistance. The fact remains that if the error is not apparent until the funds are not forthcoming, the error cannot be corrected until it is discovered, and the waiver process should recognize and remedy such situations. Such was the case in *Northeast Iowa*, and the order in that case reflects appropriate compassion.

Even companies that carefully try to meet all the deadlines may experience occasional compliance problems, and a total denial of relief is overly punitive—the penalty

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<sup>7</sup> See fn. 5, *infra*.

<sup>8</sup> 47 CFR § 54.307(d). This rule was not in effect when Pine Belt was initially certified.

<sup>9</sup> See, e.g., and contrast *Grande Communications, et al.*, Order, DA 09-883 (Wireline Competition Bureau, rel. April 21, 2009, granting nine requests for waiver of various high cost universal service support deadlines); with *LBH, LLC., et al.*, Order, DA 09-884, (Wireline Competition Bureau, rel. April 21, 2009, denying three requests for waiver of various high cost universal service support deadlines)

far exceeds the reasonable steps that companies take meet the complex requirements of the USF process. Denying this waiver request will create a hardship for Pine Belt, a small rural company that has experienced numerous unforeseen problems over the past few years, variously attributable to uncontrollable consequences of wind and weather and unfortunate human error, yet Pine Belt personnel still proceed diligently every working day to provide quality services at reasonable prices for rural customers in Alabama.

Both the company and its consultant have filed many timely filings with the Commission and USAC. Unfortunately, they have encountered a few filings that need to be supplemented or revised, because USAC filing process currently includes few safeguards and scarce notice to companies, absent failure to receive the funds, when a filing is missed.

The waiver process should permit correction of ministerial errors. Upon discovery that the October certification needed to be filed, both Pine Belt and its outside contractor worked with USAC to rectify the mistake, and then in that process, identified other revisions that needed to be submitted. Pine Belt and its outside contractor made the filings, and coordinated with the undersigned counsel to prepare and file this waiver request.

During the week prior to mishap involving the October 1 certification filing, Pine Belt's President spent a major amount of time assisting in the preparation of, reviewing and certifying Pine Belt's attached annual Section 54.209 report. Section 54.209 requires Pine Belt, as an ETC designated under federal procedures, to file a progress report on its five-year service quality improvement plan. During the September 2008 time frame, Pine Belt personnel were working to gather the information necessary to prepare and file its 2008 annual Section 54.209 progress report, attached hereto. Pine Belt's 2008 annual

compliance report was timely filed with the FCC and USAC.<sup>10</sup> This annual report details the ways in which the prior universal service funds have been employed to improve service to underserved areas in the 2007-2008 time frame, and shows that Pine Belt was and is using all funds in the proper way.

Pine Belt's President reviewed the October 1 annual certification letter for filing during late September, and had some questions for the outside consultant. During the process of getting other filings out, the consultant assumed that the company was making the filing directly. This miscommunication resulted in the error that Pine Belt has corrected. Consistent with all its prior actions and filings, Pine Belt has provided USAC and the Commission with ample evidence that Pine Belt is using the funds dispersed in the manner intended by the statute and the rules.

As NECA has noted in Comments on USAC's procedures, the Administrator should not be required to impose harsh penalties on companies for minor errors associated with certifications and other data submissions.<sup>11</sup> The Commission should be aware, from numerous waiver filings it has received, that the onerous approach currently employed places a significant pressure on small companies, who need the funds to provide improved service to rural areas but must incur additional legal and accounting expenses to rectify filing mistakes. This company clearly did not make mistakes on purpose.

Pine Belt is painfully aware of its annual certification obligation, having been granted an earlier waiver of the requirement due to hurricane-related disruptions to its

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<sup>10</sup> See Declaration of John C. Nettles, President, Pine Belt Cellular, Inc., attached as Exhibit 1. Pine Belt's Annual Report, filed Sept. 29, 2008, is attached as Exhibit 3.

<sup>11</sup> See NECA Comments, filed Oct. 18, 2005, in Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Dkt. Nos. 05-195, 02-60 and 03-109; CC Dkt. Nos. 96-45 and 97-21, (rel. June 14, 2005).

business operations. Following some initial difficulties in its compliance efforts resulting from these business disruptions, related to Hurricane Ivan and other factors such as staff family members being deployed to the War in Iraq, and in an effort to supplement its in-house compliance efforts, Pine Belt staff began working with the outside accounting firm of Jackson Thornton in Montgomery, Alabama to put together the regulatory filings. Both Jackson Thornton and Pine Belt staff put together a list of filing dates and began collaborating to make USAC-related filings. Following some initial implementation issues, Pine Belt had been working well with its outside contractor in a good faith attempt to make all required FCC filings.

As noted above, the missed filing date in this instance was due to an unfortunate miscommunication with its outside contractor. However, denial of support for the entire \$150,000 would be unnecessarily punitive, especially to a small carrier trying to provide service to underserved and economically disadvantaged rural areas. Denial of the waiver will result in denying improved service options to Pine Belt's rural customers.

#### **GRANT OF THIS WAIVER REQUEST IS IN THE PUBLIC INTEREST**

Section 1.3 of the Commission's rules specifies that the Commission may grant a waiver of the application of any of its rules for "good cause shown." Section 1.925(b)(3) provides that the Commission may waive a rule when the specific facts make strict compliance with a rule inconsistent with the public interest. The Commission may take

into account considerations of hardship, equity or more effective implementation of overall policy on an individual basis, and courts have affirmed the Commission's power to waive its rules if special circumstances warrant waiver, and grant of the waiver serves the public interest.<sup>17</sup>

Pine Belt respectfully submits that good cause and conditions of hardship exist, and grant a waiver of the Commission's rules to permit Pine Belt to receive missed universal service payments is in the public interest. The Pine Belt personnel and outside consultants Jackson Thornton responsible for filing regulatory reporting discovered that the filings had been missed only after Pine Belt failed to receive high cost payments for January and February 2009.

Absent grant of the requested waiver, USAC will continue to withhold from Pine Belt USF funding, representing a loss of approximately \$150,000 to Pine Belt. These funds otherwise could be used by Pine Belt to provide the services in rural Alabama relied on by its customers both for routine and emergency purposes. Loss of this funding imposes hardship on Pine Belt and its customers.

Pine Belt currently has three coverage extension/tower projects underway for improved voice services in the licensed area, most in areas where no carrier, large or small, provides adequate mobile voice services of any kind. Additionally, Pine Belt has been working on a project to deploy EVDO based broadband wireless data services in areas where no other carrier currently provides such services. Most of the investment capital for these projects comes from a loan with the USDA's Rural Utilities Service. However, these loan funds do not cover 100% of the cost of construction and are not available to support post

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<sup>17</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. 1990).

construction maintenance and operating activities. Loss of the CETC funds contributes to a significant delay in completion of these projects as well as complicates and compounds the difficulties of managing the costs associated with all post construction activities.

Pine Belt recognizes that USAC processes a large volume of filings, and is charged with administering the fund in accordance with FCC rules. Yet USAC's own procedures for revisions, coupled with the requested waiver, should provide the flexibility to allow payment to be made to Pine Belt. Pine Belt understands the rules that require annual certification filings, and it believes that it has complied with the spirit of those rules by using all the funds in the manner intended. Pine Belt does not take deadlines lightly, and despite the fact that it has required the Commission's waiver assistance previously, it has taken, and continues to implement ongoing efforts to train internal personnel, hire outside legal and consulting assistance to make its many regulatory filings. Pine Belt works diligently to allocate its limited financial resources to provide both the highest possible quality of service to the public and also to comply with all of the many regulatory deadlines. Pine Belt hired and worked with the third party vendor Jackson Thornton to assist its compliance efforts, and now is putting additional new procedures in place to address this human error. These procedures include reminder e-mails and a clearer procedure for making sure that all filings that are prepared get filed in timely way. As the Pine Belt's President John Nettles attests in his attached Declaration, he has ordered a review of all current procedures, appointed an in-house person to coordinate with the outside contractor, and instituted new procedures to ensure that all reports and filings are made in a timely way.



As Hopi Telecommunications, Inc. (“Hopi”) pointed out in its Petition for Waiver<sup>18</sup> there are several factors that can contribute to confusion with respect to the October 1 annual certification filing. First, there are two filings due on that date—the annual report that Pine Belt worked diligently to prepare and file, and the annual certification. The certification filing is made by state commissions for state-certified ETCs (such as Pine Belt’s ILEC affiliate) and only federally certified ETCs must make the separate certification filing. Because the annual report includes a certification, the additional certification required as a separate letter filing can be missed. In the future the Commission might consider simplifying the regulatory burdens of carriers by including a certification with line count filings, instead of requiring several separate reports.

Pine Belt recognizes that the rules at Section 54.314(d) provide a procedure for late-filed certifications, and a schedule for reducing support based on the time period in which the certification is filed. Pine Belt is asking the Commission for a hardship waiver of this section, because if it loses the support at issue it may be unable to upgrade its facilities in the manner and in the time frame that it is planning.

Pine Belt also recognizes that its inability to immediately rectify its error (not realizing that the filing had not been made until the funds were withheld) also may be a factor that the Commission considers in deciding whether to grant this waiver. Unfortunately, Pine Belt did not discover its error until the funds were not forthcoming. It thought that the certification had been filed, and it had filed its certified report that detailed its five year plan for the use of the funds. Its annual report has been timely filed, and all the certifications and line counts are on file with USAC. Pine Belt has used all

<sup>18</sup> Hopi Telecommunications, Inc., *Petition for Waiver*, CC Dkt. No. 96-45 and WC Dkt. No. 08-71, filed October 29, 2008.



past funds only for the provision, maintenance and upgrading of facilities and services for which the support is intended. For example, as the attached report shows, from July 1, 2007 through June 30, 2008 Pine Belt constructed two new base stations, two new repeater sites, reconfigured two existing base stations and increased voice channel capacity at all existing base stations.

Pine Belt has taken assertive action to serve its customers and meet its regulatory obligations. Pine Belt urges the Bureau to consider its other diligent actions and particularly its past and current hardship in deciding this petition. Pine Belt has taken, and continues to take, many managerial actions to address regulatory compliance. As its President John Nettles attests in the attached Declaration, he has carefully considered and instituted procedures, hired outside consultants, and taken many reasonable and prudent steps to stay in regulatory compliance. He thought that it had instituted sufficient safeguards to comply with all Commission and USAC requirements.

The Commission has recognized that errors occur and hardship can be created by inadvertent errors. For example, Adventure Communications Technology mistakenly input its total company revenues, rather than its end-user revenues subject to USF contributions, on its FCC Form 499-Q for the fourth quarter of 2007.<sup>19</sup> This filing error increased its USF obligation from \$4,700 per month to \$91,800, and Adventure did not realize its mistake until it received its next invoice from USAC. The Commission granted a waiver of the 45-day revision deadline, finding that strict enforcement of the filing deadline would disproportionately penalize the carrier.

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<sup>19</sup> *Adventure Communications Technology, LLC*, Order, CC Dkt. No. 96-45, WC Dkt. 06-122, DA 08-1514, (rel. June 26, 2008).

USAC has received all other required filings from Pine Belt, and is in possession of all necessary data to make the calculations for payment. Pine Belt has made all the necessary submissions to USAC. All the line count information that USAC needs to calculate the USF payments to Pine Belt has been filed within the time frames of USAC's policy for revised filings. Therefore, Pine Belt respectfully submits that grant of this waiver will not cause undue administrative burden on the USAC or the FCC. Waiver of the rule would serve the public interest by permitting Pine Belt to continue to provide quality service to its customers. Failure to grant a waiver would result in undue hardship and would disproportionately penalize Pine Belt for its inadvertent mistake.

In the case involving Citizens Communications and Frontier Communications, decided in October 2005, the Bureau waived a late filing to permit receipt of funds based on the principle of hardship and equity.<sup>20</sup> In the *Citizens/ Frontier Waiver Order* the Bureau notes that loss of funding in rural, insular high cost area could undermine investments in network, and the ability of the carrier to ensure that customers have and maintain adequate service. Although the amount of support at issues in Citizens/Frontier was much higher, the principle is the same—hardship is caused to a rural carrier when support is lost. Here Pine Belt's customers should not be punished for its consultant's failure to file the annual certification, especially when USAC has all the necessary information to calculate the payments.

Thus, Pine Belt petitions the Commission to waive the rule to permit Pine Belt to receive USF funds, because to do so would benefit customers, and would be only a minor administrative inconvenience to USAC, because it already has all the information it needs to make the payments in question.

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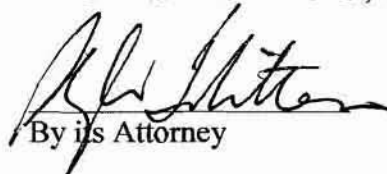
<sup>20</sup> See *Citizens/Frontier Waiver Order*, 20 FCC Rcd at 9181.

Finally, Pine Belt requests that the amount of support due to it be included in the level of support, currently capped, that ETCs in Alabama should be able to receive.<sup>21</sup> Although USAC has not yet disbursed the funds, the amount should be included in the total amounts that carriers were eligible to receive from the fund prior to March 2008.

Wherefore, for all the factors stated above, Pine Belt respectfully requests that the Commission waive application of the deadline set forth in Sections 54.314 and 54.904 of its rules, and treat Pine Belt's annual certifications, and if necessary, associated line count filings, as timely filed for purposes of payment of USF support. Failure to receive these funds will cause undue hardship to Pine Belt and be an excessive penalty for an inadvertent mistake. Pine Belt has adopted additional improved internal procedures to assure future compliance with filing deadlines. Grant of this petition is in the public interest because it will benefit the customers in rural Alabama and avoid hardship to small rural carrier. Therefore, for all these reasons, Pine Belt respectfully requests grant of this petition on an expedited basis.

Respectfully submitted,

PINE BELT CELLULAR, INC.



By its Attorney

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Date: May 29, 2009

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<sup>21</sup> See *LBH, LLC, et al, infra* at fn. 9, para. 11.

## **EXHIBITS**

### **Exhibit 1**

Declaration of John C. Nettles

### **Exhibit 2**

Declaration of Rod Ballard

### **Exhibit 3**

Pine Belt's Annual Report

### **Exhibit 4**

Pine Belt's Annual Certifications

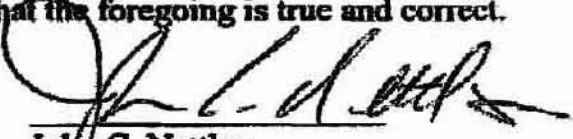
**Exhibit 1**

**Declaration of John C. Nettles**

I, John C. Nettles, do hereby declare under penalty of perjury as follows:

1. I am President of Pine Belt Cellular, Inc. ("Pine Belt").
2. This Declaration is submitted in support of Pine Belt's Petition for Waiver ( the "Waiver Petition").
3. I employed the outside consulting and accounting firm Jackson Thornton to work with my personnel to make all necessary USAC compliance filings. I was under the impression that all necessary paperwork had been filed to receive USF support. However, I recently learned that USAC will not pay certain funds. Upon further investigation, I learned that the annual certification, due October 1, 2008, was missed for the reasons described in this Waiver Petition, and other revised filings were necessary to obtain funds for the time period August 2008 through June 2009.
4. I further declare that, absent the requested waiver, Pine Belt will lose approximately \$150,000 in funds that otherwise would be used to provide the wireless services in Alabama relied on by its customers both for routine and emergency purposes.
5. To assure future regulatory compliance, I ordered a thorough review of all current procedures, appointed an in-house person to coordinate with the outside contractor, and instituted new procedures, including e-mail reminders, to ensure that reports and filings are made in a timely way.
6. I further declare that I have reviewed the aforementioned Waiver Petition and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

  
John C. Nettles  
President

Date

5/18/2009

**Exhibit 2**

**Declaration of Rod Ballard**

I, Rod Ballard, do hereby declare under penalty of perjury as follows:

1. I am a certified public accountant and Principal in the accounting firm Jackson Thornton in Montgomery, Alabama.
2. This Declaration is submitted in support of Pine Belt Cellular, Inc.'s ("Pine Belt") Petition for Waiver ("Waiver Petition"). I have been retained to provide accounting and consulting services to Pine Belt, including assisting with Universal Service Fund issues and Pine Belt's regulatory compliance with the rules and policies of the Federal Communications Commission ("FCC") and the Universal Service Administrative Company ("USAC").
3. I declare and certify as follows: Jackson Thornton prepared for filing Pine Belt's annual certification for filing prior to its October 1, 2008 due date. The filing was sent to Pine Belt for review and signature. Pine Belt's President John Nettles reviewed the letter and forwarded us some revisions for further discussion. That discussion did not take place, and the filing did not get made on time. Subsequent discussions with USAC revealed that additional revisions to line count information needed to be made, and additional certifications filed. We prepared revisions to line counts and made revised filings with USAC on Pine Belt's behalf.
4. I have been asked to quantify for Pine Belt the lost USF revenue for Pine Belt. The amount of the projected revenue is approximately \$150,000, as follows:


HCM	\$21,000.	(January- June 2009)
HCL	\$57,000.	(August 2008-June 2009)
LSS	\$17,000.	(August 2008-June 2009)
ICLS	\$55,000	(August 2008-June 2009)

5. Pine Belt has filed with USAC all the required the data and paperwork for reimbursement from the high cost fund. I make this declaration to assist Pine Belt's attempt to obtain the universal service funds necessary to serve its rural customers.
6. Pine Belt's service territory comprises one of the poorest rural areas in Alabama, and indeed the United States. Pine Belt's rural service area is expensive to serve and Pine Belt could use these high cost funds to serve rural customers.
7. I declare that Pine Belt and Jackson Thornton have taken steps to assure future regulatory compliance. Pine Belt's President, John C. Nettles, has instituted new procedures and instructions for making and supervising FCC and USAC filing and regulatory compliance efforts, and I have instituted new review procedures at Jackson Thornton.
8. I further declare that I have reviewed Pine Belt's records and discussed the facts with Pine Belt's President and his staff, and the facts stated above are based upon my personal knowledge and review, and are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Date:

5/20/09

  
Rod Ballard

**Exhibit 3**

Pine Belt's Annual Report (2008)



Phyllis A. Whitten

Attorney-at-Law

1629 K Street, NW, Suite 300

Washington, D.C. 20006

pawhitten@earthlink.net

(202) 550-0722

September 29, 2008

Via ECFS

Marlene H. Dortch, Secretary

Federal Communications Commission

44 12<sup>th</sup> Street, SW

Washington, DC 20554

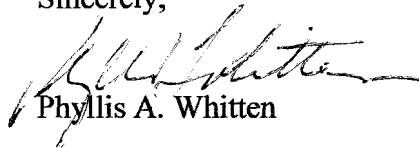
Re: CC Docket 96-45, Compliance Report Required by Section 54.209

Dear Secretary Dortch:

Transmitted herewith on behalf of Pine Belt Cellular, Inc. ("Pine Belt") is an Annual Compliance Report ("Report") for the period July 1, 2007 through June 30, 2008 containing the information required by Section 54.209 of the Commission's Rules. This Report also has been transmitted by e-mail to USAC.

Please contact me by telephone or e-mail if you have questions. Thank you for your assistance.

Sincerely,



Phyllis A. Whitten

Enclosure

Pine Belt Cellular, Inc.  
54.209 Compliance Report

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**I. Progress on Five Year Service Quality Plan**

For the period July 1, 2007 through June 30, 2008 Pine Belt Cellular, Inc. (“Pine Belt”) undertook the following network improvement projects

1. Constructed 2 new base stations.
2. Constructed 2 new repeater sites.
3. Reconfigured 2 existing base stations.
4. Increased voice channel capacity at all existing base stations.

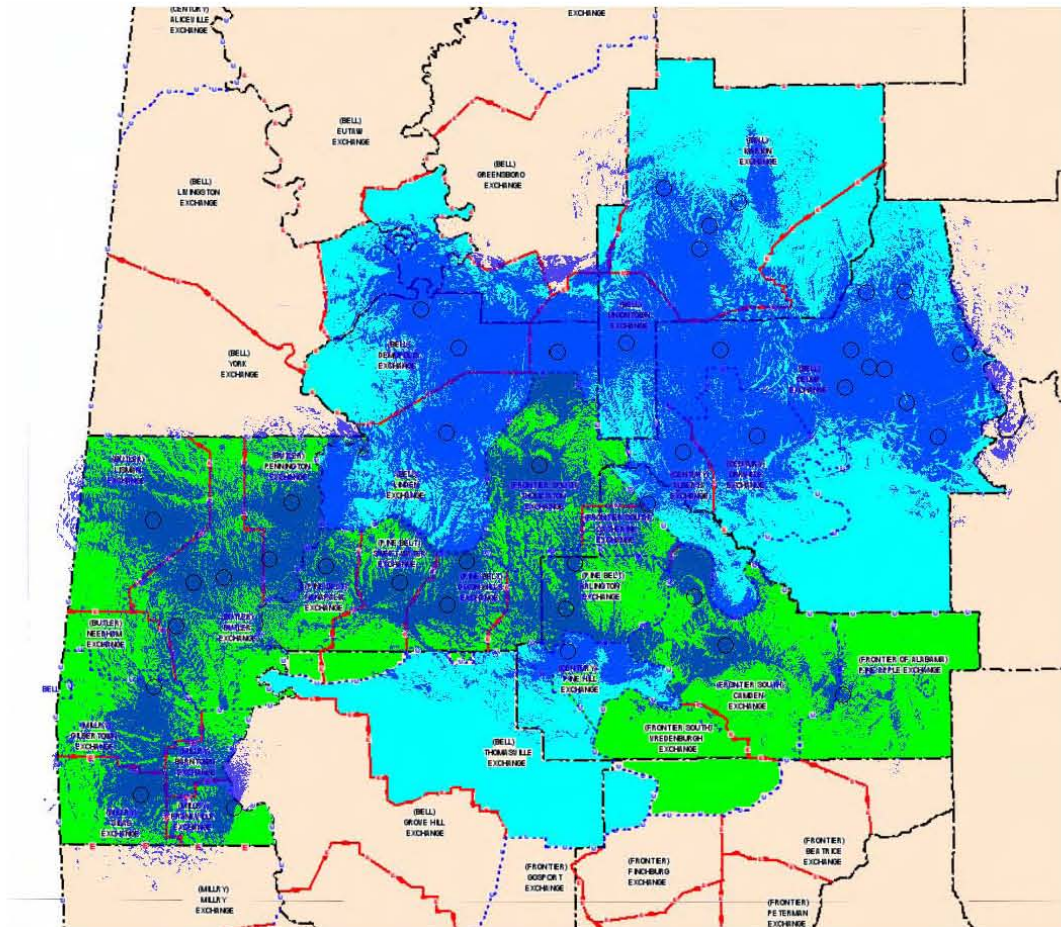
As illustrated in the following table, Pine Belt Cellular’s investment in telecommunications plant in service and under construction increased by the amount of \$577,772.

	7/1/2007	6/30/2008	Change During Period
Gross Plant In Service	11,840,681	12,707,810	867,129
Plant Under Construction	469,269	179,912	(289,357)
Total	12,309,950	12,887,722	577,772

During this same period Pine Belt received \$62,242 in High Cost and Interstate Access Support.

Pine Belt Cellular, Inc.  
54.209 Compliance Report

Figure 1 shows Pine Belt's modeled coverage from existing infrastructure as of June 30, 2008.



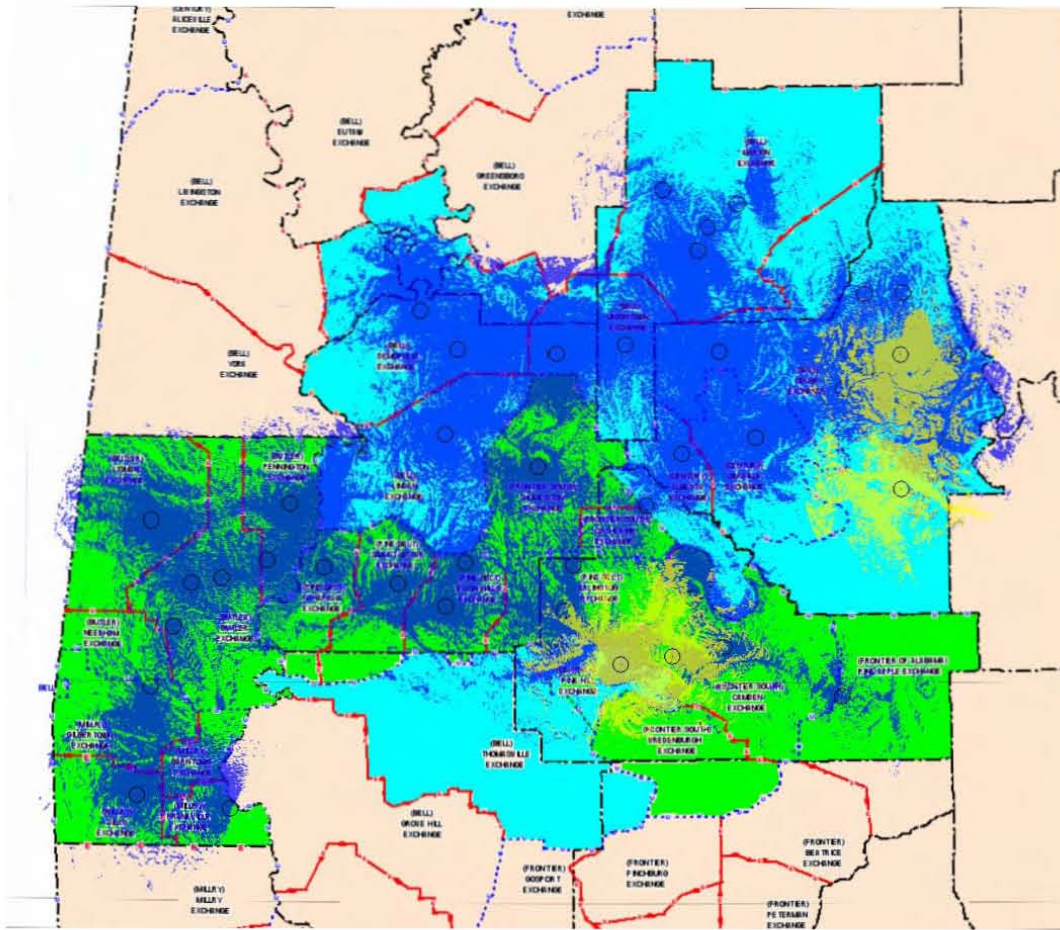
**Figure 1: Pine Belt Cellular, Inc - Coverage as of June 30, 2008**

The shaded areas represent predicted coverage at a  $-100\text{dBm}$  forward signal strength. The underlying areas and boundaries coincide with the various ILEC exchange boundaries and/or wire centers.

Pine Belt originally was granted CETC authorization limited to the underlying ILEC areas represented by the light blue background. Pine Belt's CETC authorization was extended in the FCC order issued on May 1, 2008 to also include the ILEC areas represented by the green background.

Additional coverage from future construction and network improvement plans for the next four years are illustrated in Figures 2-5 followed by a discussion of the fifth year improvement plans are discussed on page 7.

Pine Belt Cellular, Inc.  
54.209 Compliance Report



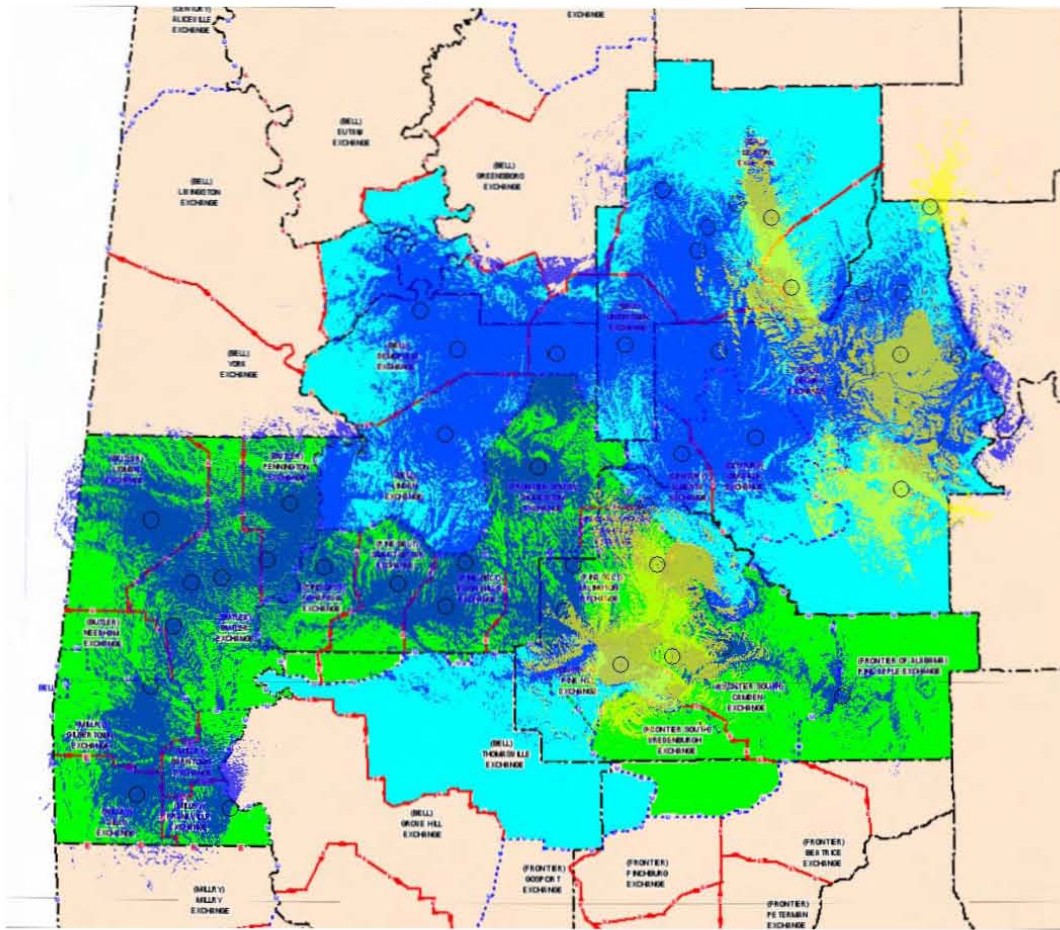
**Figure 2: Pine Belt Coverage Existing & Projected Through June 30, 2009**

Planned projects include transceivers at:

- ❑ Yellow Bluff and Possum Bend in Wilcox County
- ❑ Sardis & Selma East on Hwy 14 in Dallas County



Pine Belt Cellular, Inc.  
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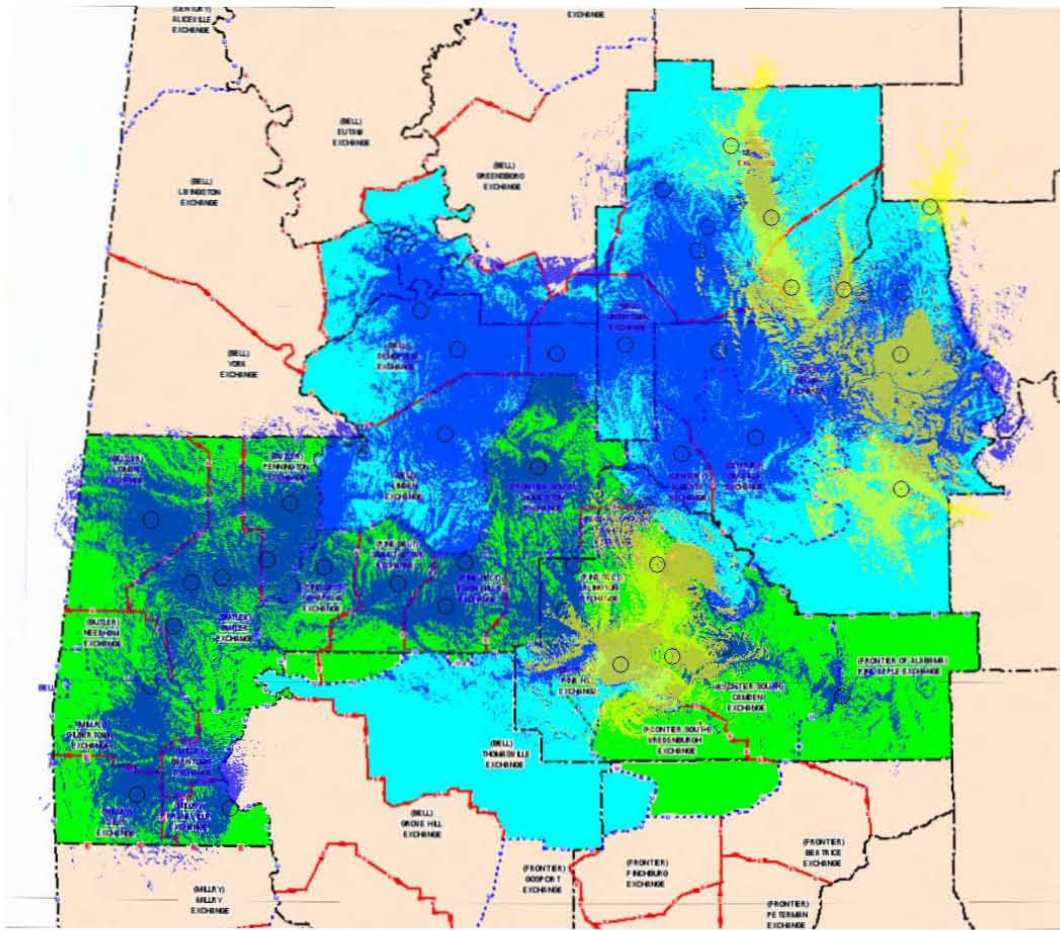


**Figure 3: Pine Belt Coverage – Existing & Projected Through June 30, 2010**

Planned projects include transceivers at:

- ❑ Lee Long Bridge in Wilcox County and
- ❑ Plantersville in Dallas County
- ❑ Radford and Suttle, in Perry County

Pine Belt Cellular, Inc.  
54.209 Compliance Report

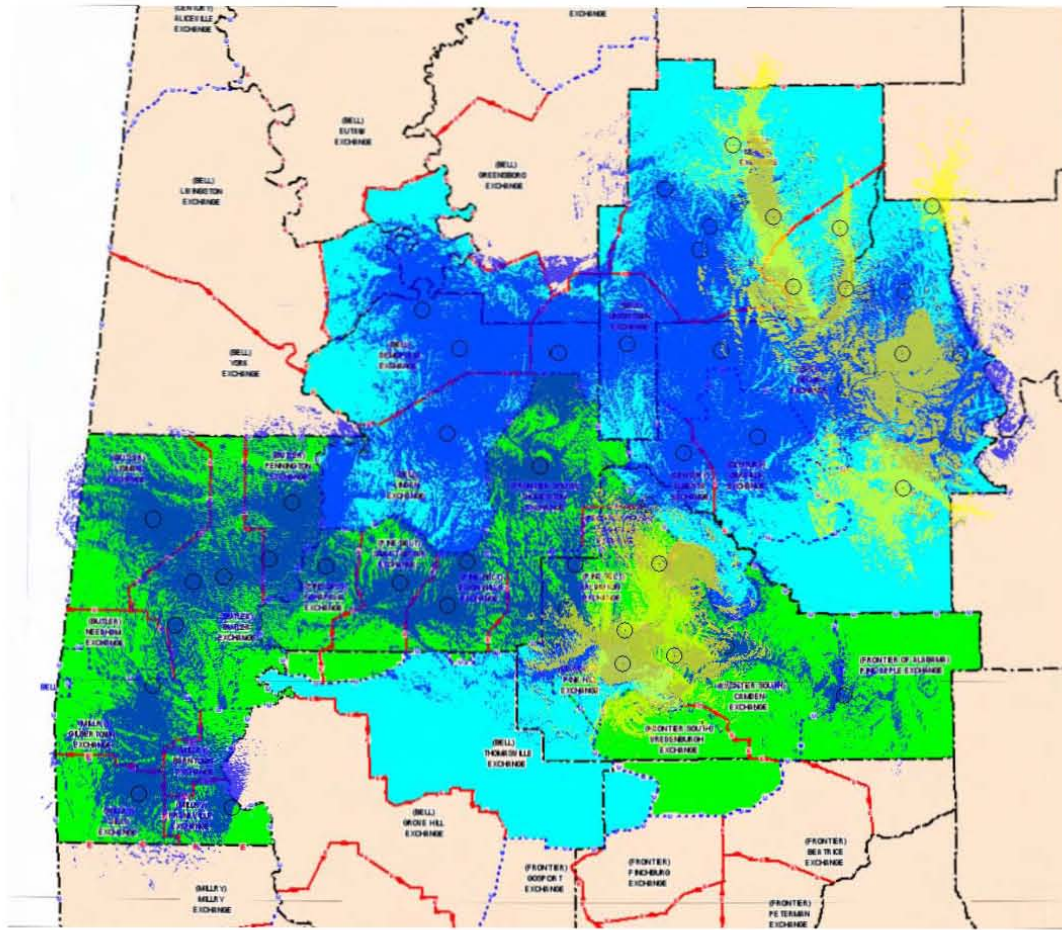


**Figure 4: Pine Belt Coverage – Existing & Projected Through June 30, 2011**

Planned projects include:

- ❑ Heiberger in Perry County and
- ❑ Jadlocks in Dallas County

# Pine Belt Cellular, Inc. 54.209 Compliance Report



**Figure 5: Pine Belt Coverage – Existing & Projected Through June 30, 2012**

Planned projects include transceivers at:

- Perryville in Perry County

# Pine Belt Cellular, Inc.

## 54.209 Compliance Report

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### **Projected Plans for the Year Beginning July 1, 2012 and Beyond**

Additional construction and coverage targets include:

- ❑ Closing the remaining gap between Camden and Selma along Alabama Highway's 41 and 89.
- ❑ Coverage along Alabama Highway 21 through Furman and Snow Hill
- ❑ Coverage along Alabama Highway 10 through Pineapple
- ❑ Coverage along Alabama Highway's 219 & 183 in North Perry County.

Coverage models have not been produced for these prospective sites.



Pine Belt Cellular, Inc.  
54.209 Compliance Report

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## II. Outages Lasting 30 Minutes or Longer Potentially Affecting at Least 10% of End Users in a Designated Service Area

Pine Belt serves a relatively small subscriber base in a small, rural area. As a result, one could argue that any outage has the potential impact of affecting service to 10% or more of its end users. Out of an abundance of caution, Pine Belt herewith submits a log of all critical outages lasting 30 minutes or longer during the reporting period.

Start Date	Start Time	End Date	End Time	Facility	Reason
8/18/2007	1:00	8/19/07	12:30	Cell 32	Lightning Back Plane Mini Cell
8/23/2007	19:00	10/24/2007	1:00	Cell 8	Lightning M/W Radio and DFI
8/23/2007	19:00	10/24/2007	23:30	Cell 30	Commercial Power Failure
9/27/2007	17:30	9/27/2007	20:30	Cell 24	1603 VTG card OOS, reset
9/27/2007	17:30	9/27/2007	20:30	Cell 25	1603 VTG card OOS, reset
10/26/2007	6:30	10/26/2007	7:45	TG 611	Choctaw County 911 trunks, TDS changed cross connect in DACCS
10/29/2007	19:00	10/29/2007	21:00	Cell 1, 1b, 3, 3a, 3b, 8 & 8b Plus TG 700 & TG 611	Shiloh 1603 Clock Card Shorted Out, Burned
2/6/2008	6:30	2/6/2008	9:30	Cell 27	Lightning, DFI, CSC 1
2/16/2008	21:08	2/17/2008	10:49	Cell 27	Rectifier Burned out M/W Cabinet
2/17/2008	13:28	2/17/2008	14:43	Cell 27	Commercial Power Failure
2/20/2008	14:43	2/20/2008	15:50	Cell 33	Commercial Power Failure
2/28/2008	18:36	2/28/2008	22:24	Cell 8	M/W Radio trouble
2/28/2008	18:36	2/28/2008	22:24	Cell 8b	Donor site Cell 8 was OOS
3/3/2008	14:30	4/29/2008		Cell 24a	Fire at site destroyed equipment - ruled as arson by local law enforcement
3/4/2008	5:30	3/4/2008	8:15	Cell 24	Marion 1603 VTG Card failed
3/4/2008	5:30	3/4/2008	8:15	Cell 24b	Marion 1603 VTG Card failed, Donor Cell 24 OOS
3/4/2008	5:30	3/4/2008	8:15	Cell 24g	Marion 1603 VTG Card failed, Donor Cell 24 OOS
3/4/2008	6:30	3/4/2008	8:15	Cell 25	Marion 1603 VTG Card failed
3/17/2008	14:11	3/17/2008	17:29	Cell 32	Commercial Power Failure
6/13/2008	6:00	6/16/2008	14:15	Cell 4b	Amplifier faulty, ordered replacement

### ❑ Outages Potentially Affecting a 911 Special Facility

During the reporting period, there were two incidents in which Pine Belt's ability to process calls to the 911 emergency response system was adversely impacted. These occurred on 10/26/2007 and 10/29/2007 and were all restricted to the facilities that serve Choctaw County, Alabama.

Pine Belt Cellular, Inc.  
54.209 Compliance Report

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- ***Actions taken to mitigate future occurrences include:***
- a. Regularly scheduled inspections of network critical components, including but not limited to line sweeps, power calibrations, and ground field audits;
  - b. Periodic reviews of all in preventive maintenance activities looking for indications of impending equipment failures;
  - c. Requests for priority treatment from supporting utilities and deployment of portable standby power generation equipment if necessary;
  - d. Coordination with ILEC

### **III. Unfulfilled Service Request**

Pine Belt has no pending requests for service in the area in which it holds ETC designation from the past year. There were three applicants during the year that disconnected during the initial subscription grace period because of reported quality of service issues at the customers premise.

### **IV. Complaints per 1,000 Handsets or Lines**

During the reporting period Pine Belt averaged less than 7 quality-of-service related complaints per 1000 handsets per annum.

Pine Belt Cellular, Inc.  
54.209 Compliance Report

**V. Certification**

Pine Belt Cellular, Inc. certifies that;

- a) it is complying with the applicable service quality standards and consumer protection rules;
- b) it is able to function in emergency situations as set forth in Section 54.201(a)(2) of the Commission's Rules;
- c) it offers a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- d) it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.



By: \_\_\_\_\_  
John C. Nettles, President  
Pine Belt Cellular, Inc.

Date: September 29, 2008

**Exhibit 4**

Pine Belt's Annual Certifications

*Pine Belt Cellular, Inc.*  
*3964 County Road 324/ PO Box 379*  
*Ardington, AL 36712-0379*

334-365-5000  
Voice

334-365-2000  
Fax

May 4, 2009

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445-12<sup>th</sup> Street, S.W., Room TW-A306  
Washington, D.C. 20554

Karen Malcher  
Vice President, High Cost and Low Income Division  
Universal Service Administrative Company  
2000 L Street, N.W., Suite 200  
Washington, D.C. 20036

Re: FCC Docket No. 96-45, Annual Certification of Support

Dear Filing Representative:


Pine Belt Cellular, Inc. ("Pine Belt"), an eligible telecommunications carrier, hereby certifies that all federal high cost and low income support received by Pine Belt is used only for the provision, maintenance, and upgrading of facilities and service for which the support is intended, consistent with section 254(c) of the Communications Act of 1934, as amended.

Pine Belt Cellular is submitting this certification to replace the letter originally filed September 3, 2007 and to include additional study areas. As requested by the Universal Service Administrative Company, listed below are the relevant assigned study area codes (SAC's).

ILEC Name	State	ILEC Study Area Number	Wireless Study Area Number
Verizon Centel Century of AL No.	Alabama	289789	289002
Bellsouth of AL	Alabama	288781	289002
Bulley Telephonic Com. Inc.	Alabama	289284	289002
Frontier CM - Alabama	Alabama	289306	289002
Prommer UMSO - AL	Alabama	289318	289002
Willey Telephone	Alabama	289301	289002
Pine Belt Telephone Co. Inc.	Alabama	289315	289002

I am authorized to make this certification on behalf of Pine Belt.

Respectfully submitted,

  
John C. Markes, President  
Pine Belt Cellular, Inc.

# Pine Belt Cellular Inc.

3384 County Road 32 // PO Box 279  
Arlington, AL 36722-0279

334-385-5000  
Voice

334-385-2103  
Fax

## Interstate Common Line Support (ICLS) 2008 - 2009

Date 5-1-2009

# ICLS

To: Office of Secretary  
Federal Communications Commission  
445 - 12th Street, S.W.  
Washington, D.C. 20554

Karen Mochter  
Vice President - High Cost and Low Income Division  
Universal Service Administrative Company  
2000 L Street, N.W., Suite 200  
Washington, D.C. 20036

Re: CC Docket No. 05-45  
**Interstate Common Line Support - ICLS**  
Annual Certification Filing

This is to certify that Pine Belt Cellular, Inc.  
will use its **INTERSTATE COMMON LINE SUPPORT - ICLS** only for the provision, maintenance  
and upgrading of facilities and services for which the support is intended.

I am authorized to make this certification on behalf of the company named above. This certification is for the  
study areas listed below. (Please enter your Company Name, State and Study Area Code)

ICLS			
Company Name	State	ILEC Study Area Code	Wireless Study Area Code
Pine Belt Telephone Co., Inc.	Alabama	250015	250012
Butler Telephone Company, Inc.	Alabama	250024	250012
Milby Telephone	Alabama	250001	250012
Frontier CM - Alabama	Alabama	250011	250012
Frontier CM SO - Alabama	Alabama	250013	250012

(If necessary, attach a separate list of additional study areas and check this box: ☐)

Signed,



Date

5/8/2009

[Signature of Authorized Representative]

John C. Nettles

[Printed Name of Authorized Representative]

President

[Title of Authorized Representative]

Carrier's Name: Pine Belt Cellular, Inc.  
Carrier's Address: 3384 County Road 32  
P.O. Box 279  
Arlington, AL 36722  
Carrier's Telephone Number: 334-385-2108

Date Received  
[Stamp]

USAC